

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

INTERMOOR, INC.,

Plaintiff,

VS.

DELMAR SYSTEMS, INC.,

Defendant.

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§ **CIVIL ACTION NO. H-05-3401**

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MEMORANDUM AND ORDER

Pending before the Court is Defendant's second motion to dismiss this declaratory judgment action, pursuant to FED. R. CIV. P. 12(b)(1), for lack of subject matter jurisdiction. Defendant argues that no justiciable case or controversy exists. After considering the parties' filings and the applicable law, the Court finds that Plaintiff has adequately amended its Complaint, in accordance with this Court's Memorandum and Order of March 27, 2006, and that Defendant has again failed to demonstrate that this Court lacks jurisdiction. Accordingly, Defendant's motion, Docket No. 40, should be and hereby is **DENIED WITHOUT PREJUDICE TO REFILING.**

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 12th day of May, 2006.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**